UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/84/Add.4
3 September 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1993

Addendum

BELARUS 1/

[11 April 1995]

1. Since the submission in 1991 of the preceding report on the implementation by the Republic of Belarus of the International Covenant on Civil and Political Rights, the situation regarding implementation of the Covenant has become more difficult. Accompanying the transition from a centrally planned economy and totalitarian system to a market economy and democracy are an economic crisis and a deterioration of the population's economic and social position. This is having an adverse impact on the implementation in Belarus of the International Covenant on Civil and Political Rights.

1/ For the second periodic report submitted by the Government of Belarus see CCPR/C/28/Add.4; for its consideration by the Committee, see CCPR/C/SR.568 to SR.569 and SR.571 and Official Records of the General Assembly, Fortieth session, Supplement No. 40, (A/40/40), paras. 320-381. For the third periodic report submitted by Belarus, see CCPR/C/52/Add.8; for its consideration by the Committee, see CCPR/C/SR.1151 to SR.1153 and Official Records of the General Assembly, Forty-seventh session, Supplement No. 40, (A/47/40), paras. 529-569.

GE.96-17308 (E)

Information on the articles contained in the International Covenant

2. The adoption by the Supreme Council of Belarus on 15 March 1994 of a new national Constitution was an event of particular importance for human rights in the country. The new instrument proclaims Belarus to be a unitary, democratic, social State based on the rule of law (art. 1).

3. With the adoption of the new Constitution, Belarus opted definitively for democracy and respect for human rights. This choice is reflected in numerous articles.

4. The sole source of State power in the Republic of Belarus is the people, which exercises its authority directly and through representative organs in the forms and within the limits defined by the Constitution.

5. Accordingly, "all action to attain State power through violent methods or through any other breach of the laws of the Republic of Belarus shall be punishable according to the law" (art. 3).

6. Among the forms of the exercise of popular power is the right of citizens of the Republic of Belarus "to participate in decision-making on State affairs both directly and through freely elected representatives. Citizens' direct participation in the management of the affairs of society and the State shall be exercised through the holding of referendums and public consideration of draft laws and questions of republican or local significance and by other means defined by law" (arts. 37 and 73).

7. The principle of the separation of powers into legislative, executive and judicial authority lies at the basis of the State. Application of this principle is ensured by, on the one hand, the granting of independence to State organs within the limits of their competence and, on the other, by the obligation of interaction, restraint and balance (art. 6).

8. The adoption of the Constitution entailed radical changes in State structures and central and local organs of legislative and executive authority.

9. The highest permanent body and sole legislative organ is the Supreme Council of the Republic of Belarus. It is elected by the citizens of the Republic for five-year terms (arts. 79-81).

10. At the head of the State and the executive authority stands the President of the Republic of Belarus, who is directly elected by the citizens of the Republic for a period of five years (arts. 95 and 97).

11. The principles and the precise procedure for the holding of presidential elections are laid down in an Act of the Republic of Belarus dated 29 April 1994. This Act provides that the President of the Republic shall be elected by secret ballot by citizens of the Republic of Belarus aged 18 years or above on the basis of universal, equal and direct suffrage. It also prohibits all restriction of citizens' voting rights "on grounds of origin, social or property status, race or nationality, sex, education, language, attitude to religion, political views or type or nature of occupation". The

only barriers to participation in presidential elections are: recognition by a court as legally incompetent; presence, after sentencing by a court, in a place of deprivation of liberty; preventive detention pursuant to the legislation on criminal procedure.

12. Electors are guaranteed the right of free, personal and completely unsupervised expression of their choice to participate or not to participate in elections and of their choice of person for whom to vote. Every elector has one vote (arts. 1 and 2).

13. The Act accords considerable attention to the organization of presidential elections and the proposal of candidates, as well as to: the preparation and conduct of voting; the formation of, and procedure to be followed by the relevant commissions; the supervision, within the prescribed limits, of elections; vote counting; the settlement of disputes; questions of liability for breaches of electoral law, and so on.

14. The Constitution provides for the establishment of a Cabinet of Ministers of the Republic of Belarus to assist the President in the exercise of executive authority in the spheres of the economy, foreign policy, defence, national security and preservation of public order and other aspects of government (art. 106).

15. Local government and self-government are exercised by citizens through local Councils of People's Deputies, executive and administrative organs, organs of territorial public self-government and local referendums and meetings and other forms of direct participation in State and public affairs (art. 117).

16. The fundamental changes now being implemented on the basis of the new Constitution in the system, structure and competence of central and local State organs make it impossible to give more detailed information on the exercise of legislative or executive authority.

17. Judicial authority in the Republic of Belarus is vested in the courts, which administer justice on the principles of: independence and subordination only to the law; openness of hearings; adversarial judgement; equality of the parties to proceedings; appealability of decisions, verdicts and other findings.

18. The Constitution prohibits all interference in activity of the "courts in the administration of justice" and provides that such interference shall be punishable by law (arts. 109-116).

19. The Constitution contains a special section relating to State control and supervision.

20. This institutes, for the first time in the country's history, control over the constitutionality of normative instruments. This control is exercised by the Constitutional Court, the members of which are elected by the Supreme Council of the Republic from among qualified legal experts and serve for terms of 11 years (arts. 125 and 126).

21. The competence, duties and procedure of the Constitutional Court pursuant to the Constitution are defined in the Constitutional Court Act of the Republic of Belarus, which is dated 30 March 1994, and the Regulations of the Constitutional Court of the Republic of Belarus, which were approved on 27 May 1994.

22. These instruments confer upon the Constitutional Court an exceptionally important role in safeguarding the primacy of the Constitution and in ensuring its direct application in the territory of the Republic, the consistency of the instruments adopted by State organs with the Constitution and the observance of legality in the making and application of the law.

23. The Constitutional Court is thus responsible for examining matters and issuing conclusions relating to:

(a) Conformity of laws, international treaties and other undertakings of the Republic of Belarus with the Constitution of the Republic and with international legal instruments ratified by the Republic;

(b) Conformity of legislative instruments of inter-State entities of which the Republic of Belarus is a member, and of Decrees of the President of the Republic of Belarus, Decisions of the Cabinet of Minsters of the Republic of Belarus and instruments of a normative nature adopted by the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus or the Procurator-General of the Republic of Belarus with the Constitution of the Republic and with laws and international instruments ratified by the Republic.

24. The Constitutional Court is empowered to undertake on its own initiative the examination of the conformity of the normative instruments of any State organ or public association with the Constitution of the Republic and with laws and international legal instruments ratified by the Republic. It may also hand down conclusions concerning violation of the Constitution by the President of the Republic. It is also empowered to submit to the Supreme Council proposals for the amending or supplementing of the Constitution and for the adoption or alteration of laws.

25. The Constitutional Court further has the important duty of drawing up an annual report to the President and the Supreme Council on the observance of the Constitution in Belarus.

26. The conclusions of the Constitutional Court are final and can be neither appealed nor protested.

27. Questions of the legal status and role of the individual in society and the State occupy an important place in the new Constitution.

28. Article 2 states expressly that the "human being shall be the supreme value of society and the State" and makes the State responsible to citizens for creating conditions for the free and honourable development of each individual. In turn, citizens must unwaveringly discharge the obligations placed on them by the Constitution and are accountable to the State for doing so.

29. Article 21 proclaims it to be the State's supreme objective to safeguard the rights and freedoms of citizens of the Republic of Belarus. In this regard, "the State shall guarantee the rights and freedoms of citizens of Belarus" which are laid down in national legislation (the Constitution and laws) or provided for in the State's international undertakings.

30. "The exercise of the rights and freedoms of the individual laid down in the ... Constitution may only be suspended during a state of emergency or martial law and then in the manner and within the limits defined in the Constitution and the law" (art. 63). Even in such cases, however, there can be no restriction of the rights provided for in article 24, which guarantees everyone the right to life; in the third part of article 25, which stipulates that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment or subjected without his consent to medical or other experimentation"; or in article 26, which states that "no one shall be held guilty of a crime unless his guilt has been proven in a manner provided for by law and established in a court verdict that has entered into legal force". That is connected with the provision in the third part of article 109 prohibiting the creation of special courts. Nor may there be any infringement of the rights relating to believers' religious views or the celebration of religious ceremonies, cults, rituals or the like (art. 31).

31. Another important point, and one of the guarantees of citizens' rights and freedoms in exceptional circumstances is the provision to the effect that war may only be declared by decision of the country's highest legislative organ, the Supreme Council (art. 83, para. 16). Furthermore, the Constitution spells out the conditions in which the President may decide to declare a state of emergency or martial law and makes his decision subject to approval within a period of three days by the Supreme Council (art. 100, paras. 18 and 25). It also bans the making of changes or additions to the Constitution during a state of emergency (art. 148, second part).

32. The people's right to self-determination is set out as a fundamental principle in the preamble to the Constitution and in articles defining the political and State structure of the Republic. Article 1 declares Belarus to be a unitary, democratic, social State based on the rule of law which has full and supreme power over its territory and implements its foreign and domestic policy independently. This article further provides that "The Republic of Belarus shall defend its independence and territorial integrity and constitutional structure and ensure legality and legal order".

33. Article 9 states directly that "the territory of the Republic of Belarus shall be the natural foundation of the existence and the spatial limit of the exercise of self-determination by the people and the basis for the people's well-being and the sovereignty of the Republic of Belarus". The national territory is "one and inalienable".

34. The principles underlying the approach to self-determination and relations with other States are also directly enshrined in article 18, which provides that "in its foreign policy, the Republic of Belarus shall proceed from the principles of the equality of States, the non-use of force or threat

of force, the inviolability of borders, the peaceful settlement of disputes, non-interference in internal affairs and other generally recognized principles and rules of international law".

35. The principle of equality before the law is given expression in article 22 of the Constitution: "All persons shall be equal before the law and entitled to equal protection of their rights and lawful interests without any discrimination whatsoever". People are equal and "no one may have unlawful advantages or privileges" (art. 23, second part).

36. Irrespective of their sex, social origin, property status, citizenship, or political or religious views, etc., individuals enjoy identical rights and freedoms and have identical obligations.

37. No distinction in individuals' legal status is permitted unless it is specifically provided for in the Constitution or other laws or derives from obligations laid down in international treaties (arts. 5, 10, 11, 13, 14, 16, etc.).

38. The Constitution makes it obligatory for the State to ensure the protection of the rights of any person requiring such protection. Article 60 therefore provides that "State organs and officials and other persons responsible for the execution of State functions must take all necessary measures within the limits of their competence for the exercise and protection of the rights and freedoms of the individual". The same article also provides that those whose failure to discharge their obligations results in infringement of an individual's rights or freedoms shall be held accountable for their unlawful actions.

39. Among the most important guarantees of human rights are their protection before the courts and the possibility open to individuals, in order to protect their rights, freedoms or dignity, of suing for the repair of material or moral damage (art. 61).

40. For the exercise of the right to sue, the Constitution provides, in article 62, that everyone is entitled to the assistance of advocates and other representatives before the courts, other State organs, institutions and public associations, etc., and that action to impede the provision of such assistance is prohibited.

41. The Constitution specifically refers, in article 24, first and second parts, to the right of everyone to life and to the State's obligation to protect the life of each individual against all illegal encroachment.

42. The death penalty has been maintained, but strict limits have been placed on its use. Thus, the Constitution (art. 24, third part) provides that it will be abolished and is meanwhile to be considered only as an exceptional measure to be applied for particularly serious crimes and on the basis of a court sentence.

43. Article 25 of the Constitution makes it incumbent on the State to ensure the freedom, inviolability and dignity of the person and provides that "restriction or deprivation of personal liberty shall be possible in the cases

and according to the procedure prescribed by law". The same article expressly establishes the individual's right to verification by the courts of the legality of his detention or arrest and states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment or subjected without his consent to medical or other experimentation. This consolidates the guarantees of the individual's rights to physical and mental integrity, life and respect for his dignity.

44. The Constitution further provides that "no one shall be obliged to testify or provide evidence against himself, or members of his family or close relatives. Evidence obtained in violation of the law shall have no legal force" (art. 27).

45. Of great importance for individuals is the inclusion in the Constitution of a provision on the presumption of innocence. According to this provision (art. 26), the onus of proving a person's involvement in a crime lies on the competent State organs and guilt is not confirmed until a court sentence has entered into legal force.

46. The inviolability of the home and of citizens' other lawful property is also guaranteed. This is done through a provision stating that "no one may without lawful grounds enter a citizen's home or other lawful property against his will" (art. 29).

47. In addition to the rights mentioned above, the Constitution also reflects a whole range of fundamental human rights, namely the rights of: free movement and choice of place of residence within the borders of the Republic of Belarus and free exit from and return to the country (art. 30); participation in State affairs and political or public life, and free expression of personal opinions and attitudes to religion (arts. 31, 33, 35-39, etc.), and the right to property, work, leisure, health care, education, social security, protection for the native culture, etc. (arts. 41-51, etc. in sect. II, "The individual, society and the State").

48. Important provisions of relevance to human rights are to be found in article 7 of the Constitution, which binds the State and all its organs and officials to act solely within the bounds of the law. The same article also confirms the primacy of the Constitution over all other laws and legal instruments, which are to be considered void if they are at variance with the Constitution. It also makes it compulsory to publish the normative instruments of State organs and to bring them to universal attention.

49. Section VIII of the Constitution ("Force of, and procedure for amending the Constitution of the Republic of Belarus") is of great importance in this regard. It is specially devoted to the relationship between the Constitution and other normative instruments and to the procedure for altering and supplementing the Constitution.

50. Thus, article 146 states clearly that the Constitution shall have supreme legal force and that laws and other instruments of State organs shall be adopted on the basis of, and in accordance with it. The article also defines the order of precedence of laws: "In the event of discrepancy between a law

and the Constitution, the Constitution shall prevail; in the event of discrepancy between another normative instrument and a law, the law shall prevail".

51. The conditions applicable to the amendment and supplementing of the Constitution are clearly stated. Article 147 specifies who may propose changes, and article 148 the minimum period of time over which they must be considered and the circumstances in which amendment or supplementing of the Constitution is prohibited.

52. Article 149 provides that "the Constitution, laws to amend or supplement it, enabling legislation pertaining to the Constitution or the aforesaid laws and documents concerning the interpretation of the Constitution shall be considered to have been adopted if not less than two thirds of the elected Deputies to the Supreme Council vote for them".

53. There is also provision for amendment and supplementing of the Constitution through direct popular action by means of referendums (art. 149).

54. The Constitution also resolves the question of the relationship between domestic and international law. Article 8 states that the Republic of Belarus recognizes the primacy of generally recognized principles of international law and shall ensure the conformity with them of its domestic law. There is, in the second part of article 8, one reservation in this regard, namely that "the conclusion of international treaties that contravene the Constitution shall be prohibited".

55. The Countering Monopolistic Activity and Developing Competition Act was passed on 10 December 1992. It defines the institutional and legal bases for restricting, halting and preventing monopolistic activity and policy for creating conditions conducive to the efficient functioning of markets and the protection of consumers' rights.

56. The Protection of Consumers' Rights Act was adopted on 19 November 1992. It sets out the general legal, economic and social foundations for the protection of consumers' rights and applies to citizens' relations with enterprises, organizations and institutions however they are owned and whatever the conditions under which they do business and with individual entrepreneurs.

57. Article 5 of the Act concerns the protection of consumers' rights:

> "The State shall ensure that consumers' lawful interests are protected and that consumers receive the information they need to make decisions concerning the acquisition and use of goods."

Protection by the State of consumers' rights is to be effected through organs of State power and management, specially empowered bodies and the courts. The procedure for judicial protection of consumers' rights is the subject of article 6 of the Act.

58. The Environmental Protection Act of the Republic of Belarus was passed on 26 November 1992. According to this Act, protection of the environment,

resource conservation and the preservation of ecological security are essential to the country's sustainable economic and social development. The purposes of the Act are to lay the legal foundations for such development in Belarus and to protect human rights by securing conditions conducive to human life and health.

59. The Freedom of Religions and Religious Organizations Act was adopted on 12 December 1992. Its main objectives include securing citizens' freedom of belief and religious expression, preserving social justice and equality and defending citizens' rights and interests.

60. The Ethnic Minorities in the Republic of Belarus Act was adopted on 11 November 1992. It is based on the Constitution and the principles of international law concerning human rights and ethnic minorities. It lays a legal basis for relations between nationalities that guarantees the free development of ethnic minorities in the Republic of Belarus and is designed to promote harmonious ethnic relations within the country and the preservation and development of ethnic minorities' cultures and the satisfaction of their lawful rights and interests. Article 1 of this Act provides that membership by "a citizen of the Republic of Belarus of an ethnic minority is a matter of his personal, free choice and the exercise of that choice shall entail no adverse consequences". Article 3 provides that "All direct or indirect limitation of the rights or freedoms of citizens of the Republic of Belarus on the ground of their membership of an ethnic minority shall be prohibited, as shall all attempts to assimilate them against their will."

61. Other laws are also of great importance for the preservation of individual rights and freedoms.

62. There is, for example, the Searches Act adopted on 12 November 1992. The preamble to this Act defines searches in the sense of activity by authorized agencies of inquiry and makes it clear that the Act is intended to regulate relations between the parties to such activity and to establish a system of legal guarantees pertaining to searches that is based on the primacy of universal human values and respect for citizens' constitutional rights and freedoms.

63. That is also the foundation for the substance of the Act, as is evidenced by the provisions describing what searches may comprise (art. 1) and the objectives in, and principles and procedure for carrying them out (arts. 3-6, 8, 9, etc.). Article 7 specifically embodies guarantees of the preservation of citizens' rights and freedoms: it directly prohibits the infringement of citizens' constitutional rights and freedoms in cases where searches yield results not envisaged in the Act. The same article also contains other important provisions safeguarding citizens' rights and freedoms, as follows:

> "Anyone who considers that the actions of an organ carrying out a search have resulted in the limitation of his rights or freedoms may lodge a complaint with higher authorities, the procurator or the courts.
>
> "Anyone whose participation in a crime is not legally proven and who considers that he has been the subject of a search or searches may demand that the organ which effected them tell him, within the limits

consistent with the requirements of secrecy and the preservation of State secrets, the nature of the information gathered concerning him. Should such a demand be refused, he may lodge a complaint about the refusal with the courts.

"Evidence gathered during searches concerning persons whose participation in a crime is not legally proven shall be kept for a period of one year and shall then be destroyed unless the discharge of official duties or the demands of justice require otherwise."

64. The Office of the Procurator of the Republic of Belarus Act was adopted on 29 January 1993. It defines the role and the place of the Procurator's Office in the system of State organs for monitoring law enforcement, as well as the nature, principles and limits of the activity of the staff of the Office. Article 1 of the Act defines the Office of the Procurator as "an independent organ accountable to the Supreme Council of the Republic of Belarus having supreme authority for the effecting on behalf of the State of supervision of the precise and uniform enforcement of the law". The first part of article 2 of the Act provides that the Office's main activities shall be: "... guaranteeing of the rule of law and strengthening of legality for the purposes of defending citizens' rights and freedoms and the lawful interests of the State, businesses, institutions, organizations or public associations".

65. There is an article specially devoted to regulation of the activities of the Procurator's Office and observance of the rights of the individual. It states clearly that "in the exercise of their functions, staff of the Office of the Procurator shall ensure the protection of the rights and freedoms guaranteed to the individual by the State irrespective of citizenship, social or property status, race, nationality, language, sex, age, education, attitude to religion or political or other beliefs. Restriction of citizens' rights and freedoms shall be permitted only on the grounds and in the manner prescribed by law".

66. In the exercise of their functions, staff of the Procurator's Office are forbidden to divulge information concerning citizens' private lives, to impugn their honour or dignity or otherwise injure their rights or lawful interests. Departure from this rule is not permitted in any case "unless the discharge of obligations provided for by law requires otherwise".

67. The same article establishes the obligation of offering the possibility of legal assistance to anyone detained or taken into custody in the course of criminal investigations. It also sets out the guarantees available to citizens of receipt from agencies of the Procurator's Office of explanations and information regarding the reasons for restriction of their rights or freedoms, and access to the evidence available concerning them following completion of a check or investigation. Persons who consider that action by a member of the Procurator's Office has infringed their lawful rights or freedoms may lodge a complaint with the next highest procurator or with the courts.

68. The Legal Status of Foreign Citizens and Stateless Persons in the Republic of Belarus Act was passed on 3 June 1993. It defines the criteria

for holding people to be foreign citizens or stateless persons (art. 1) and the basis for the rules governing such persons' legal status, namely domestic law and international treaties to which Belarus is a party (art. 2).

69. Article 3 of this Act declares foreign citizens and stateless persons to have the same rights, freedoms and obligations as citizens of the Republic of Belarus. Their rights and freedoms may only be limited by law and in cases where "the protection of the rights or fundamental freedoms of citizens of the Republic of Belarus, the safeguarding of State security or the preservation of public order or public health so requires". The second part of article 3 provides that "foreign citizens and stateless persons in the Republic of Belarus are equal before the law irrespective of their origin, social or property status, race, nationality, sex, education, language, attitude to religion, type or nature of occupation or other circumstances".

70. The Act lists the fundamental rights, freedoms and obligations of foreign citizens and stateless persons. Such people are guaranteed inviolability of the person and home, the right to exercise labour, economic or other activity, free movement in the territory of the Republic, etc.

71. There is provision for certain restrictions with respect to participation in referendums and elections, the right to be elected to State organs of the Republic of Belarus, occupancy of posts appointment to which is subject to possession of Belarusian citizenship and the performance of universal military service (arts. 16-18).

72. A number of restrictions apply to entry to and exit from the Republic of Belarus by such persons. The list of grounds for introducing such restrictions is exhaustive and concrete and has primarily to do with the safeguarding of State security, the preservation of public order and health and the protection of the rights and lawful interests of citizens of the Republic of Belarus (arts. 20 and 21).

73. The Act provides for the possibility of expelling foreign citizens and stateless persons from Belarus should they commit illegal acts constituting serious breaches of Belarusian law but not entailing prosecution, or should it be necessary to safeguard State security, preserve public order or health or protect the rights and lawful interests of citizens of the Republic of Belarus or other persons (art. 25).

74. The Procedure for Entry to and Exit from the Republic of Belarus by Citizens of the Republic of Belarus Act was adopted in June 1993 and came into force on 1 January 1994. The purposes of this Act are to guarantee "in accordance with the principles of the Universal Declaration of Human Rights and other generally recognized international legal instruments ... the right of citizens of the Republic of Belarus freely to leave their country and return to it" and to regulate procedure for the filling out of the documents required for exit from and entry to the Republic.

75. Pursuant to article 1 of this Act, every citizen of the Republic of Belarus has the right to leave and enter the Republic of Belarus and cannot be deprived either of the right to enter the Republic of Belarus or of the right to leave it.

76. That right may only be restricted temporarily and on grounds established by the present Act or by other legislative instruments of the Republic of Belarus. An exhaustive list of such grounds is given in article 5 of the Act. According to that list, the circumstances and periods for which exit from the Republic may be restricted are as follows:

> "(1) [if a citizen of the Republic] ... possesses information constituting a State secret: until the circumstances preventing exit cease to obtain;
>
> (2) If criminal proceedings have been instituted against him: until their completion;
>
> (3) If he has been convicted of a crime: until completion of the sentence or his release;
>
> (4) If he refuses to discharge obligations;
>
> (5) If a civil suit has been brought against him in the courts: until completion of the proceedings;
>
> (6) If he knowingly gave false information about himself in filling out the documents;
>
> (7) If he is on the military service register and subject to call-up for military service at a specified time: until the service has been performed or he is released from it in accordance with the law."

77. Temporary restrictions on exit from the Republic of Belarus may be introduced by the Government in the event of the occurrence in any country of a state of emergency making it too dangerous for Belarusian citizens to be there. "Such decisions and notice of their repeal must be made public." The exit restrictions must be lifted once the state of emergency is over.

78. Article 7 of the Act entitles citizens to lodge complaints with the competent State organ or the courts concerning the temporary restriction of their right of exit from the country. The Act prohibits restriction of the rights of citizens leaving Belarus to take up permanent residence abroad. They may take with them or conserve for themselves property of which they are the legal owners, except land, etc. Article 5 provides that, in the event of their temporary or permanent return to Belarus, such citizens shall enjoy equally with others all the rights guaranteed by Belarusian law and shall have the duties established by law.

79. The new political and socio-economic circumstances of the Republic have led to changes in the approach to and the thrust of policy with regard to criminal offences.

80. In March 1994, a number of amendments and additions were made to the Criminal Code of the Republic of Belarus. They concern the purposes of the Code, the notion of crime, the criteria for determining damage caused by criminal acts, forms of punishment and types of corpus delicti, etc.

81. The first part of article 1 of the Criminal Code has been amended to state that "the Criminal Code of the Republic of Belarus has as its purpose the protection of human life, health, rights and freedoms, the constitutional order, State and public interests, property, the environment and duly established law and order against criminal infringements" and that the other, no less important purpose of the Code is "to contribute to the prevention of criminal infringements and to the cultivation in citizens of a spirit of respect for the laws of the Republic of Belarus".

82. Article 2 confirms the place of the Criminal Code as the sole body of criminal law applicable within the territory of Belarus.

83. Article 7 redefines the concept of crime: "The term 'crime' means the perpetration (by commission or omission) of a culpable, socially dangerous act prohibited by the present Code." Such forms of punishment as internal exile and banishment are ruled out and restrictions have been introduced on the use of the death penalty. The latter now remains "as an exceptional form of punishment, pending its complete abolition" and may only be applied for certain particularly serious crimes identified in the Criminal Code. Now, neither persons who were less than 18 years of age at the time of the crime nor women may be sentenced to death (previously, application of the death penalty was prohibited only in the case of pregnant women).

84. The death penalty is applicable for crimes that represent a particular danger to the State or to human life or health and for the commission of certain unlawful acts in time of war. The crimes in question include: high treason (art. 61); conspiracy to seize State power by unlawful means that results in loss of human life (art. 61-1, third part); commission of a terrorist act (arts. 63 and 64); sabotage (art. 65); gangsterism (art. 74); premeditated homicide in aggravating circumstances (art. 100); rape by a particularly dangerous recidivist or having particularly serious consequences, and rape of a female minor (art. 115, fourth part); attempts on the lives of police officers, members of people's voluntary militias, members of the armed forces or other persons, and attempts on the lives of their close relatives in connection with failure by police officers, members of people's voluntary militias, members of the armed forces or other persons to discharge their official functions or public duty with respect to the preservation of public order (art. 189-1); hijacking of an aircraft or seizure of an aircraft with a view to hijacking it if the act is committed using force or threats or results in the aircraft crashing and causes loss of human life or serious bodily harm (art. 208-2, third part); opposing a superior or other person discharging military duties laid upon him or forcing either to breach such duties if the offence is committed in aggravating circumstances (art. 229, para. c); other military offences if committed in time of war or in a warlike situation (art. 231, para. b; art. 236, para. d; art. 238, para. b; art. 244, para. r; art. 246, para. d; art. 249, para. c; art. 250; art. 251, para. b; arts, 252, 253, 255 and 256).

85. In 1993, the death penalty was abolished for the following crimes: embezzlement (arts. 87-91), bribe-taking by officials in particularly serious circumstances (art. 169, third part), and production or sale of forged currency or securities (art. 84).

86. In March 1994 a number of articles concerning particularly serious crimes against the State were deleted from the Code (art. 166, "Subversion"; art. 67-1, "Incitement to commit crimes against the State"; art. 70, "Commission against another State of particularly dangerous crimes against the State").

87. The provisions of articles providing for prosecution for particularly dangerous crimes against the State (art. 61, "High treason"; art. 63, "Terrorist act"; art. 65, "Sabotage"; art. 67, "Incitement to the overthrow or change of the constitutional order of the Republic of Belarus or to the commission of particularly dangerous crimes against the State") and for crimes against the State (art. 75, "Smuggling"; art. 80, "Unlawful crossing of the State boundary of the Republic of Belarus", and others) were improved. In view of the emergence of new types of crime, there have been added to the Code articles providing for prosecution for unlawful acts relating to the issue and circulation of securities (arts. 84-1 and 84-2) and the performance of currency operations (arts. 85-1 and 85-2) and substantial changes have been made to chapter 7 of the Code, "Crimes against property".

88. Between 1992 and the first half of 1994, criminal liability was introduced for crimes in the sphere of economic relations (business, granting of credit, competitive trading, banking and commercial activity, etc.). In addition, numerous amendments were made to chapter 12, "Malfeasance in office", the aim being to increase the accountability of State officials for unlawful acts.

89. Other articles deleted from the Code include: art. 119, first part, which provided for criminal liability for voluntary homosexual relations (between men); art. 193-1, "Intentional breach by foreign citizens or stateless persons of the rules of residence in the USSR or of transit through the USSR" (including the territory of the Republic of Belarus); art. 194, "Breach of the rules of the passport system", and art. 194-1, "Intentional breach of the rules of administrative supervision".

90. Among the most important changes and additions to the Belarusian Code of Criminal Procedure of relevance to citizens' rights and freedoms are those concerning the rules governing arrest, custody and the lodging of complaints about unlawful treatment of persons subjected to arrest or custody.

91. Article 7, "Inviolability of the person", has been supplemented by a new section which provides that "anyone arrested on the authorization of a procurator shall be entitled to lodge a complaint with the courts concerning the legality of, and grounds for his arrest or the prolongation of his detention in custody".

92. As a result, the second part of article 53, "Obligations and rights of counsel for the defence", has been expanded to provide for the right of defence counsel "to study detention reports, arrest warrants or decisions to prolong detention in custody, to lodge complaints with the courts concerning the arrest or the prolongation of the detention in custody of their clients and to study the evidence submitted to the courts in connection with, and participate in the court hearings of such complaints".

93. Articles 220-1 and 220-2 are new articles concerning, respectively, the procedure for complaints to the courts about arrest or prolongation of custody and verification by the courts of the legality of, and grounds for arrest or the prolongation of detention in custody.

94. In its first part, article 220-1 provides that a complaint of the kind in question may be lodged with a court either directly by the detainee, his defence counsel or his legal representative or by the person conducting the inquiry or the investigator. The same article sets out the duties of pertinent officials (the authorities of the place of detention or the inquirer or investigator) regarding such complaints.

95. Article 220-2 establishes the procedure for verifying the legality of, and grounds for arrest or prolongation of custody. Complaints must be examined by a judge individually and rapidly, in closed hearings with the participation of a procurator, a counsel for the defence and, in the case of a minor, the latter's legal representative; the detainee may also be summoned to appear if necessary.

96. Depending on the outcome of the examination, the judge may order that the detainee be released or that no further action should be taken on the complaint. A judge's order for release must be executed immediately.

97. No one whose release has been ordered by a judge may be placed in custody again for the same offence without the discovery of fresh circumstances justifying his arrest (art. 91, first part).

98. Detainees are entitled to complain to the courts about their arrest, to study the evidence submitted to the court and to participate in the examination by a judge of their complaint (art. 85, second part).

99. Changes made to the third part of article 49, "Participation of counsel for the defence in criminal proceedings", in March 1994, enlarged the range of persons who may act as defence counsel. These persons now include: "members of a college of advocates, close relatives or legal representatives of the accused person, and other persons entitled to engage in advocacy".

100. The second part of article 50 provides that "at the request of the suspect, accused person or person on trial, counsel for the defence may be appointed by the inquirer or investigator or by the court (judge) through the medium of a college of advocates".

101. In June 1993, amendments were made to the Code of Criminal Procedure to make possible in courts of first instance hearings by a single judge, as well as collegial hearings (art. 10, first part).

102. The Customs Code of the Republic of Belarus was adopted on 3 February 1993. It is of great importance for the implementation of foreign and domestic policy and comprises a system of measures available to the State to enhance the effectiveness of the country's foreign ties.

103. The main tasks of customs authorities are to: protect the economic interests of the Republic of Belarus; combat smuggling and administrative

breaches of customs law; prevent illegal trading in narcotics, arms, objects forming part of the country's cultural or historical heritage, intellectual property and other items subject to State protection; assist special organs in combating international terrorism and organized crime; enforce the customs law of the Republic of Belarus and organize and improve customs clearance and inspection with a view to accelerating the movement of goods and passengers across customs boundaries, etc. The Act defines the system of customs organs, their competence, the forms and methods of customs inspection, customs regimes and procedures, the accountability of customs officials, etc.

104. The State Tax Inspection in the Republic of Belarus Act, which was adopted on 2 February 1994, establishes the rights, duties and accountability of the State tax inspectorate with regard to the collection of taxes and other mandatory payments to the country's budget, verification that they have been correctly computed and paid, and the application of the law on taxes and business.

105. Towards the end of 1992 the Supreme Council approved a number of legislative instruments of great importance for the country's defence and military structure, the foundations of its foreign and domestic military policy and the objectives and limits of use of the armed forces.

106. The Defence Act states in its preamble that, in view of the State sovereignty of the Republic of Belarus, war and the use of armed force are rejected as unacceptable means of achieving political or economic goals and the necessity is recognized of maintaining peace in relations between States and peoples and their equal security and territorial integrity.

107. The Act further states explicitly that "the Republic of Belarus, while giving priority to political dialogue, reserves the right to employ all possible economic, diplomatic and military means to implement a defence-oriented military policy with a view to preventing and halting aggression".

108. The Act deals with the foundations of, and institutional arrangements for the defence of the Republic, the competence of (central and local) organs of State power and management, enterprises, institutions and organizations in the sphere of defence, and citizens' obligations and rights.

109. The article defining the concept of defence of the Republic of Belarus describes it as a system of "State measures of a political, economic, legal and military nature undertaken for the purposes of ensuring the readiness of the Republic of Belarus to repel aggression, protect its citizens, independence and territorial integrity and halt infringements of the sovereignty of the Republic of Belarus".

110. Article 10 defines citizens' principal rights and obligations with regard to the defence of the country. Protection of the Republic of Belarus is described as a constitutional duty of each of the Republic's citizens that may be fulfilled through universal conscription and through citizens' voluntary enlistment for military service. Citizens participating in the country's

defence enjoy the socio-economic, political and personal rights and freedoms laid down in the law of the Republic, with the exceptions and restrictions necessitated by the nature of military service.

111. In addition, "the Republic of Belarus guarantees to military personnel and other citizens fulfilling the obligations of military service, persons released from military service, war invalids and veterans, partisans, internationalist fighters, their families and the families of members of the armed forces who are killed or die while in military service during peacetime the exercise of the rights and freedoms provided for by law and the protection of their honour, dignity, health and lives and the recognition of their services".

112. The Act contains a section specially devoted to the discharge by the Republic of Belarus of its obligations under international law where defence is concerned. It contains a provision to the effect that "in organizing and effecting its defence, the Republic of Belarus shall observe the rules of international law and of the treaties to which it is a party" (art. 20).

113. The second part of article 20 states that the provisions of the Charter of the United Nations concerning the right to individual and collective security are fundamental to the cooperation "of the Republic of Belarus with other States for the purposes of their joint defence against aggression and the maintenance of international peace and security".

114. Various Acts of the Republic of Belarus - the Armed Forces Act, the Universal Military Duty and Military Service Act and the Status of Members of the Armed Forces Act - pay great attention to guaranteeing the rights of members of the armed forces and ensuring such persons' equality before the law and with regard to social protection.

115. For the first time, provision has been made for the armed forces to comprise both conscripts and persons serving voluntarily under contract. Provision has also been made for alternative military service.

116. The Internal Forces of the Ministry of Internal Affairs of the Republic of Belarus Act was adopted on 3 June 1993. These forces comprise an armed unit for the protection of citizens' lives, health, rights, freedoms and lawful interests, of society and the State and of the constitutional order, security and sovereignty of the Republic of Belarus against criminal and other illegal acts.

117. The right to protection is guaranteed by the Constitution. In article 62 of this instrument, the State guarantees legal assistance to everyone who needs it, without restriction. In the cases provided for in the Republic's Bar Act, such assistance is provided free of charge. Every physical or juridical person in the territory of the Republic of Belarus is entitled to apply to an advocate (of his choice) for legal assistance in protecting his rights and lawful interests in the courts or other organs or organizations competent to resolve the legal matters in question. Persons who have been detained, arrested or convicted are guaranteed the conditions necessary for fully confidential meetings and consultations with an advocate.

118. Professional protection of the rights and lawful interests of physical or juridical persons in criminal, civil or administrative-law proceedings can only be effected by advocates. Guarantees to this effect are given in the Constitution and the Bar Act, which was enacted by decision of the Supreme Council on 15 July 1993. The Bar Act provides for the following types of legal assistance by advocates: consultations and provision of explanations concerning legal questions; oral and written guidance concerning the law; drafting of statements, complaints and other documents of a legal nature; representation in the courts or other organs or organizations in civil and administrative-law proceedings; participation in preliminary criminal investigations and in criminal trials as counsel for the defence in criminal cases or as representatives of victims or of civil plaintiffs or defendants. Other forms of legal assistance by advocates are also permitted.

119. Free legal assistance is available to plaintiffs in courts of first instance in cases relating to labour relations, to maintenance payments or to compensation for damage resulting from severe injury or other work-related impairment of health. It is also available to handicapped persons in disability classes I and II (for consultations) and to physical persons duly exempted from payment for legal assistance (art. 6).

120. Both physical and juridical persons are assured of receiving high-quality legal assistance because, inter alia, of the requirements and conditions set in the Bar Act for granting of the right to work as an advocate. The practice of advocacy is open to citizens of the Republic of Belarus who have completed a higher legal education and have at least three years' specialized experience or who, failing such experience, have worked for between six months and a year in advocacy, passed a qualifying examination and been granted an advocate's licence (art. 7). No one may be an advocate if he has been formally recognized as wholly or partly legally incapable, or has committed intentional crimes or been barred (dismissed) from the practice of advocacy or dismissed from legal-defence or other organs in compromising circumstances (art. 10).

121. In the exercise of their functions, advocates are independent and subject only to the law. It is forbidden to interfere in an advocate's professional activity, to require of him the disclosure of any information covered by the rules of professional secrecy or to require such disclosure of officials or other staff of advocates' self-management organs or advocates' associations. All organs and officials of the Republic of Belarus have a duty to recognize and respect the secrecy of consultations with anybody to whom they are providing legal assistance in the discharge of their official functions. In the case of advocacy, the requirement of professional secrecy applies to the questions on which people seek legal assistance, the substance of consultations with such persons and the advice and explanations which the advocate gives them (art. 15).

122. The main principles of the profession of advocacy, such as independence, personal immunity and confidentiality, applicable to advocates in countries of the European Union are consistent with the principles applicable to advocates in Belarus. Those principles are reflected not only in the Belarusian Bar Act but also in all the legislative instruments of relevance to the practice of advocacy. The rights and duties of advocates when acting in criminal, civil or administrative-law cases are governed by the relevant Belarusian law.

123. In the exercise of their functions, advocates must comply precisely and unswervingly with current law and employ all the ways and means provided by law to protect the rights and lawful interests of the physical or juridical persons who seek legal assistance from them (Bar Act, art. 18, which also imposes other duties on advocates in order to protect clients' rights). Detailed rules for advocate/client relations with the aim of protecting clients' interests, as well as measures to protect clients against fraud, negligence or professional misconduct on the part of advocates are to be found both in the Bar Act and in the Advocate's Rules of Professional Ethics. Draft Rules of Professional Ethics were adopted in principle at the Congress of Belarusian Advocates on 19 April 1994 and work on them is now in the final stages.

124. In Belarus, the law on criminal procedure makes it mandatory for a defence counsel to participate in trials:

(i) In which a procurator or public prosecutor takes part;

(ii) Of minors;

(iii) Of dumb persons, deaf persons or other persons who, because of a physical or mental handicap, are unable personally to exercise their right to defence;

(iv) Of persons who do not know the language in which the proceedings are conducted;

(v) Of persons accused of crimes punishable by death;

(vi) Of persons with conflicting interests, even if one of those persons has counsel (art. 51).

125. Defence counsel must also participate in the inquiry and preliminary investigation in the cases referred to in paragraphs 2 to 5 of article 51. If, in cases where participation of defence counsel is mandatory, no counsel is invited to participate by the suspect, the accused or the person brought to trial or, at his instructions or with his consent, by any of the other persons so authorized by law, the procurator or the court shall be obliged to secure the participation of defence counsel in the case through the medium of a college of advocates (art. 51).

126. The Bar Act provides for disciplinary action to be taken against advocates for acts contrary to the law or professional ethics.

127. Complaints against action by advocates in the discharge of their professional duties must be examined in the prescribed manner by the relevant organs or officials within the limits of their competence and in the light of the law (art. 19). That is yet another guarantee of the right to protection.

- - - - -